

SENATE BILL 3613

By Jackson

AN ACT to amend Tennessee Code Annotated, Title 43, Chapter 8, Part 3, relative to the aerial application of pesticides.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 43, Chapter 8, Part 3, is amended by adding a new section as follows:

§43-8-315.

(a) The department shall maintain a registry of pesticide-sensitive persons, beekeepers, and certified organic farms. Upon request, the department shall register any person who pays annually a twenty-five dollar (\$25.00) registration fee and submits certification for an organic farm, documentation from a licensed physician stating the persons' sensitivity to pesticides, or documentation of beekeeper status. The department shall provide the list to all aerial applicators at the time they become licensed or renew their license, and twice annually, in mid-February, before spraying season begins and again in August which is the middle of the spraying season. The list shall include the name, address, telephone number, e-mail address and fax number of those persons registered as beekeepers, organic farmers and pesticide sensitive with the department.

(b) Aerial applicators shall be required to contact individuals on the registry of pesticide-sensitive persons, beekeepers, and certified organic farms who reside on property that is contiguous to the property where pesticides will be applied by air. This notice shall include a contact phone number where notified persons can obtain additional information. Individuals shall be notified by fax or e-mail, and by telephone only if no fax or email communication is possible. Notification must occur at least

twenty-four (24) hours prior to application. The communication shall be copied to the department of agriculture. In the event notification is by telephone, the department shall be notified by fax or e-mail at least twenty-four (24) hours prior to the scheduled application.

SECTION 2. Tennessee Code Annotated, Title 43, Chapter 8, Part 3, is amended by adding a new section as follows:

§43-8-316.

(a) Notwithstanding any contrary provision of law, the department may assess the actual and reasonable costs of the investigation and hearing of any disciplinary action held in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, in which sanctions of any kind are imposed on any person or entity required to be licensed, permitted, registered or otherwise authorized or regulated by the department or its respective divisions, board, commissions or agency. These costs may include, but are not limited to, those incurred and assessed for the time of the prosecuting attorneys, investigators, expert witnesses, administrative judges, court reporters and any other persons involved in the investigation, prosecution and hearing of the action.

(b)

(1) All costs assessed pursuant to this section shall become final thirty (30) days after the date a final order of assessment is served.

(2) If the individual or entity disciplined fails to pay an assessment when it becomes final, the department may apply to the appropriate court for a judgment and seek execution of such judgment.

(3) Jurisdiction for recovery of such costs shall be in the chancery court of Davidson County.

SECTION 3. Tennessee Code Annotated, Title 43, Chapter 8, Part 3, is amended by deleting §43-8-305 in its entirety and by substituting instead the following language as a new §43-8-305:

(a) In the event the commissioner has reason to believe a licensee has violated any of the provisions of this part, including the rules and regulations promulgated hereunder, the licensee shall be notified and a hearing shall be conducted in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(b) The commissioner, on determining that any person may have violated any provision of this part, may petition for injunctive relief from further violation. Such petition shall be addressed to the chancery court in the county in which the offense occurred. The court, on determining that probable cause of a violation of this part exists, shall issue appropriate injunctive relief.

(c) The commissioner has the power to subpoena any persons or records incident to the hearing and a charge of contumacy may be filed for those who refuse to comply.

(d) Upon a finding that a violation has occurred, the commissioner may:

- (1) Issue a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation;
- (2) Permanently revoke the license;
- (3) Temporarily revoke the license;
- (4) Suspend the license for a definite period of time; or
- (5) Impose other conditions as are necessary for environmental or public safety.

(e) The action of the commissioner may be reviewed by filing a petition for review in the chancery court of Davidson County in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. The decision of the commissioner shall remain final until modified by the commissioner or by the courts.

SECTION 4. This act shall take effect January 1, 2007, the public welfare requiring it.